CRP 270/2006

BEFORE

THE HON’BLE MR JUSTICE H. N. SHARMA

Heard Mr J Handique, learned for the petitioner.

This revision petition is filed under Article 227 of the Constitution of India read with section 115, CPC, challenging the order dated 7.8.2006 passed by the learned Civil Judge (Jr Division) No 1, Dibrugarh, as executing Court in Execution Case No 2/2006. The decree holder obtained a decree on 7.4.97 in TS No 39/88. The said decree was for khas possession of the suit land from the defendant petitioner. The decree holder / respondent put the decree in execution by filing Execution Case No 2/2006 in which the judgment debtor filed an application under section 47, CPC, claiming that the decree is a nullity in view of the fact that there is no proper description of the suit land which is vague and hit by the provisions of Order 7, rule 3, CPC; that the decree was not properly drawn up as per Order 20, Rule 9, CPC; that the suit was incorrectly valued and the decree holder has no possession of the same and that while discussing the Issue Nos 3 and 5 in the judgment and order dated 7.4.97 passed in TS No 39/88, the learned trial Court has considered filing of an earlier suit, ie, TS No 23/68 and passed the decree, in fact, the decree passed in TS No 23/68 has attained its finality.

The learned Executing Court after hearing the learned counsel for the parties, observed that there is no vagueness in the decree and it is not hit by the provisions of Order 7, rule 3, CPC and not executable a submitted. It was clarified that the provisions of Order 7, Rule 3, CPC, are held to be directory one and not mandatory. The learned trial Court also found that the decree itself being for recovery of khas possession is indicative of the fact that the decree holder is not in possession of the suit land. It was also held that the decree holder duly filed the execution case. On such consideration, the executing Court rejected the application filed under section 47, CPC, objecting the execution of the decree.

I have perused the materials on record including the impugned order. On such perusal of documents and materials on record, I do not find that the learned trial Court committed any jurisdictional error in rejecting the petition filed by the petitioner under section 47, CPC. The impugned order dated 7.8.2006 was perfectly passed and no error of law or of jurisdiction was committed by the learned trial Court in passing the same. However, the impugned the order dated 7.8.2006 does not decide any right of any of the parties and it is just a formal order.

In view of the aforesaid discussions, I do not find any merit in this petition and accordingly stands rejected.